



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.11.2019**
CORAM:

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESHI

HCP.(MD).No.423 of 2019

Janaki ... Petitioner
Vs.

1.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.

2.The State Rep.by
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.

4.The Superintendent,
Central Prison,
Salem.

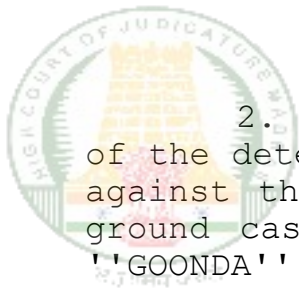
... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for records in H.S(M)Confdl.No.24/19, dated 02.05.2019 and set aside the same and direct the respondents herein to produce the detenu Kalidoss, aged 24 years, S/o.Esakkidurai @ Esakkiappan, who has been termed as "GOONDA" and now confined in Central Prison, Salem, before this Court and set the detenu at liberty.

For Petitioner	: Mr.P.Rajkumar
For Respondents	: Mr.K.Dinesh Babu
	Addl.Public Prosecutor

O R D E R

The present Habeas Corpus Petition is directed against the Detention Order passed by first respondent in Detention Order in H.S(M)Confdl.No.24/19, dated 02.05.2019.



2. The Sponsoring Authority had recommended for the detention of the detenu, under Act 14 of 1982, on the adverse case registered against the detenu and the detenu was thereafter arrested in the ground case. The Detaining Authority has branded the detenu as a 'GOONDA' and has passed the Detention order, dated 02.05.2019.

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3. The learned counsel for the Petitioner submitted that there are two adverse cases and one ground case registered against the petitioner. The petitioner is under judicial custody both in the adverse cases as well as in the ground case. The detention order was passed in the ground case that has been registered against the detenu in Crime No.200 of 2018, for the offence under Sections 302 IPC @ 109, 120(b), 302, 201 IPC r/w Section 3(2)(v) of SC/ST (POA) New Amendment Act, 2015. Further, the detaining authority has taken into consideration only the possibility of the detenu coming out on bail in the ground case, more particularly, when the bail petition filed before the Magistrate Court has been dismissed and no bail petition was pending as on the date of passing of detention order. The detaining authority has also not taken into consideration the judicial custody suffered by the detenu in the adverse case and in which case, the detaining authority has not applied his mind with regard to the possibility of the detenu coming out on bail in the adverse case. The learned counsel further submitted that the subjective satisfaction has been arrived at without any materials and therefore, the Detention Order is vitiated.

4. In support of his contention, the learned counsel for the Petitioner relied upon the case of ***Rekha .vs. State of Tamil Nadu, through Secretary to Government and another reported in (2011) 5 SCC 244***, wherein, it has been held as follows:

12. In *Rekha v. State of Tamil Nadu through Secretary to Govt. & Anr.*, (2011) 5 SCC 244, this Court while dealing with the issue held :

"7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused.....

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date



of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail... A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground." (Emphasis added)

Thus, it is evident from the aforesaid judgment that it is not the similar case, i.e. involving similar offence. It should be that the co-accused in the same offence is enlarged on bail and on the basis of which the detenu could be enlarged on bail.

13. So far as the appellant's son is concerned, he had been arrested for the offence related to FIR No.53 (6) 2011 under Section 302 IPC read with Section 25(1-A) Arms Act dated 14.6.2011. The FIR had been lodged against unknown persons, however, appellant's son was arrested on 19.6.2011 in respect of the said offence. Subsequently, the detention order dated 30.6.2011 was passed by the District Magistrate under N.S. Act on various grounds, inter-alia, that the appellant's son was involved in extorting of money and



giving shelter to underground members of unlawful association, namely, Kangleipak Communist Party vide notification published in the Gazette of India on 13.11.2009 as his activities were pre-judicial to the security of the State and maintenance of public order.

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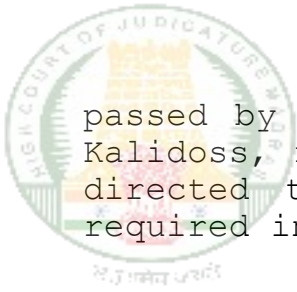
14. In support of the detention order, a large number of documents had been relied upon and supplied to the appellant's son including the copy of FIR No.254 (12) 2010 under Section 17/20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called UA (P) Act) and copy of FIR No. 210 (5) 2011 under Section 20 of the UA (P) Act and released orders in those cases dated 13.12.2010 and 1.6.2011 respectively had been passed.

15. In the instant case, admittedly, the said bail orders do not relate to the co-accused in the same case. The accused released in those cases on bail had no concern with the present case. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in the instant case had the detenu applied for bail could have been released on bail. Thus, as the detenu in the instant case has not moved the bail application and no other co-accused, if any, had been enlarged on bail, resorting to the provisions of Act was not permissible. Therefore, the impugned order of detention is based on mere ipse dixit statement in the grounds of detention and cannot be sustained in the eyes of law.

5. Heard the learned Additional Public Prosecutor appearing on behalf of the respondents.

6. We have carefully gone through the Detention Order. It is seen that the Detaining Authority has discussed about the case that has been registered against the detenu. The detaining authority has taken into consideration only the possibility of the detenu coming out on bail in the ground case, more particularly, when the bail petition filed before the Magistrate Court has been dismissed and no bail petition was pending as on the date of passing of detention order. The detaining authority has also not taken into consideration the judicial custody suffered by the detenu in the adverse case and in which case, the detaining authority has not applied his mind with regard to the possibility of the detenu coming out on bail in the adverse case. This makes it clear that the detaining authority was not sure whether actually bail petition was filed or yet to be filed by the detenu, which clearly reveals non application of mind and the detention order has been passed without any materials and therefore, the detention order is vitiated.

7. In the result, the Habeas Corpus Petition is allowed and the order of detention in H.S(M) Confdl.No.24/19, dated 02.05.2019



passed by the first respondent, is set aside. The detenu, namely Kalidoss, male, aged 24 years, S/o.Esakkidurai @ Esakkiappan, is directed to be released forthwith, unless his detention is not required in connection with any other case.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The District Collector and District Magistrate,
Thoothukudi District,
Thoothukudi.
2. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 9.
- 2.The Inspector of Police,
Srivaikundam Police Station,
Thoothukudi District.
- 4.The Superintendent,
Central Prison,
Salem.
5. The Joint Secretary to Government,
Fort st. George, Chennai
6. The Additinal Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

HCP. (MD) .No.423 of 2019
01.11.2019

MK (05.12.2019) 5P 7C